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FILE NO: 46001.000278

November 9, 2001

By Hand Delivery

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

WorldCom, Cox, and AT&T ads. Verizon
CC Docket Nos. 00-218, 00-249, and 00-251

Dear Ms. Salas:

Enclosed please find four copies of Verizon VA's (i) Direct Testimony on Performance Issues (Issue Nos. III-14, IV-120, IV-121, IV-130, and VII-18), and (ii) Reply Brief In Support Of Its Motion To Dismiss Consideration Of Issues Related To Performance Measures And Assurance Plans.

Please do not hesitate to call me with any questions.

Sincerely,

Kelly L. Faglioni

Kelly L. Faglioni
Counsel for Verizon

KLF/ar
Enclosures
cc: Dorothy T. Attwood, Chief, Common Carrier Bureau (8 copies)
Jeffery Dygert (w/o enclosure)
Katherine Farroba (w/o encl.)
John Stanley (w/o encl.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

VERIZON'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS CONSIDERATION OF ISSUES RELATED TO PERFORMANCE MEASURES AND ASSURANCE PLANS

While AT&T and WorldCom do much to evade the facts, recent events further demonstrate that issues related to performance measures and standards should be excluded from this arbitration. Indeed, the Virginia Commission has now adopted a set of performance measures and standards to which the parties to the Virginia Collaborative agreed and is in the process of resolving the small handful of issues on which the parties could not reach consensus. In addition, the Virginia Commission has announced that it will initiate a separate proceeding to adopt a state-specific performance assurance plan ("PAP") that is tailored to the recently adopted measures and standards. Consequently, it is now even more appropriate to dismiss any such issues from this arbitration and allow the Virginia Commission to complete the process, rather than waste the resources of the parties and this Commission by duplicating the effort in the context of this already complicated arbitration proceeding.

1. The Virginia Commission's Actions Demonstrate Significant Progress Toward Establishing A Performance Assurance Plan.

Verizon VA bases its motion to dismiss in part on the fact that the Virginia Commission has made significant progress toward establishing performance standards and remedies. Of that progress, there can now be no doubt, contradicting AT&T's and WorldCom's assertion that Virginia Commission action is speculative. By Order dated October 30, 2001, the Virginia Commission granted the Staff of the Virginia Commission's Motion to Establish Carrier Performance Standards for Verizon VA, thereby adopting the set of performance standards on which the Parties to the Virginia Collaborative reached consensus. For seven unresolved issues, the Virginia Commission set a comment schedule that concludes this month. Finally, the Commission stated its intent to consider a performance assurance plan for Verizon VA in a separately docketed case for which a procedural order is imminent. Accordingly, the Virginia Commission is well on its way to establishing an effective incentive plan applicable to all CLECs in Virginia.

Indeed, AT&T admits that the state process has succeeded in achieving performance standards mutually acceptable to both ILECs and CLECs, and even agrees that "there is no present need for the Commission to retrace the steps of the Virginia Collaborative and the SCC." AT&T Opposition, pp. 6-7.[1]

Notwithstanding the success of the Virginia Commission in establishing performance measures and standards, AT&T and WorldCom continue to demand that this Commission duplicate the ongoing action of the Virginia Commission as to performance remedies. For the reasons set forth in Verizon VA's renewed motion, such parallel proceedings remain inappropriate and unnecessary, and would merely waste the resources of the parties and this Commission. Moreover, contrary to the claims of the petitioners, given the progress it has already made, the prospect that the Virginia Commission will adopt a PAP in a timely manner can hardly be labeled "speculative." And in the meantime, Verizon VA already is subject to a comprehensive PAP -- modeled on the PAP adopted by the New York Public Service Commission -- under the terms of the *BA/GTE Merger Order.*

While WorldCom and AT&T also make much of the possibility that the Virginia Commission may lack the authority to forcibly impose a PAP on Verizon VA, that ultimately is beside the point. It is true that the Virginia Commission previously has expressed its view that provisions for damages should <u>not</u> be included by compulsion in <u>interconnection agreements</u> (as opposed to a statewide plan).[2] Nevertheless, there is little doubt that the Virginia Collaborative

[1] Whether WorldCom continues to demand that this Commission consider performance metrics issues is unclear. In its opposition filed October 31, WorldCom does not concede that the issues resolved in the collaborative should not be revisited and instead argues that "there is no telling when or even if the Virginia Commission will address, let alone resolve, performance standards and remedies in generic proceedings." WorldCom Opposition, p. 4. Of course, the Virginia Commission's order concerning performance standards was issued October 30. In any event, this Commission has indicated its intent to "dismiss these remaining metrics issues if they are resolved or agreed to in Virginia." Letter of Jeffrey H. Dygart, November 5, 2001, p. 3.

[2] *See Petition of Cavalier Telephone, LLC, for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Relief,* Case No. PUC990191, Order at 5-6 (June 15, 2000).

and Virginia Commission action will ultimately result in effective performance measurements and a PAP. Regardless of whether the Virginia Commission can compel Verizon VA to submit to a PAP, the reality is that having a PAP in place in Virginia is necessary to approval of a § 271 application in Virginia, as it has been in every state in which Verizon has applied for § 271 approval.

2. The Virginia Commission's Actions Are Highly Relevant To Verizon VA's Incentives To Provide Excellent Service To CLECs In Virginia.

WorldCom's constant theme is to claim that the work of the Virginia Commission is "wholly irrelevant" to this arbitration. WorldCom Opposition, pp. 2, 3, 4. This Commission's own actions belie WorldCom's argument. This Commission previously has dismissed from this arbitration issues that were being considered in other ongoing proceedings and recently indicated that it will dismiss performance standards issues in deference to the results from the Virginia collaborative proceedings. Moreover, WorldCom itself agreed not to arbitrate collocation issues here in deference to proceedings pending before the Virginia Commission. WorldCom's suggestion that the Virginia proceedings are "irrelevant" cannot be squared with the conduct of either this Commission or the petitioners.

The Virginia Commission's industry-wide approach, in which all CLECs can participate, also is relevant to any principled view of the performance standards and remedies issues. In its proceedings, the Virginia Commission will ensure that performance standards and a PAP provide Verizon VA with incentive to provide excellent service. Insofar as performance standards and remedies are being considered here, the goals are no different. In their respective Petitions for Arbitration, AT&T and WorldCom both cite this incentive as the precise goal of their proposed standards and remedies. *See* AT&T's Petition for Arbitration, 243-250; WorldCom's Petition for Arbitration, 217-221. Similarly, in their respective briefs, both again cite the need for a remedies plan to ensure that Verizon VA has the incentive to provide excellent service. Indeed, in view of the equivalent purpose of the two proceedings, AT&T's two-tiered performance remedies plan expressly contemplates coordination of any remedies or standards adopted by this Commission with the remedies and standards adopted by the Virginia Commission. Thus, whether as a matter of practicality or principle, the ongoing, advancing Virginia Commission proceedings are not only relevant, but highly important to—and should be accommodated by—this arbitration. There is no reason for this Commission to go behind—or ahead of, as the case may be—the Virginia Commission when taking action to meet the very goal AT&T and WorldCom have articulated.

3. AT&T And WorldCom Have No "Right" To Contract Language Addressing A Performance Assurance Plan.

AT&T argues that it has a "right" to have the issue of performance standards and remedies considered here and included in the interconnection agreement. AT&T Opposition, pp. 4-5. This is clearly incorrect. The Act does not impose a specific requirement that performance remedies be incorporated into an interconnection agreement. Indeed as noted above, this Commission already has dismissed certain issues from this proceeding on the indisputably sufficient ground that they are being considered in other proceedings. Far from constituting a violation of AT&T's rights or this Commission's responsibilities, considering and ruling on Verizon VA's motion to dismiss fulfills any conceivable duty the Commission may have to consider the issue.[3]

[3] Of course, in this instance, the Virginia Commission itself is in the process of establishing a state-specific PAP, and has determined that a generic PAP applicable to all carriers should be adopted instead of individualized remedy plans in interconnection agreements. Under these circumstances, the Virginia Commission (which has discretion over the conduct of its own proceedings) cannot be said to have "failed to act." Accordingly, this Commission lacks authority to act in its place under § 252(e)(6) of the Act..

Not only does the Act lack a requirement that performance remedies be included in an interconnection agreement, as a general matter, an interconnection agreement is an inappropriate vehicle through which to subject an ILEC to performance measurements and a PAP. Incorporating measurements and the terms of a PAP into the interconnection agreement implicitly suggests that every CLEC seeking interconnection with an ILEC could seek to subject that ILEC to substantively different measurements or remedies. It would be an administrative nightmare, and could be physically impossible, for an ILEC to comply simultaneously with varying measurements, standards and plans all in the name of the same goal of incenting the ILEC to provide excellent service.

Moreover, including a PAP in an interconnection agreement simply is not necessary. When a state commission in the context of a generic docket determines that performance measurements and plans are appropriate to ensure that an ILEC is delivering excellent service, that will be the law and the ILEC will be subject to the resulting plan whether incorporated into an interconnection agreement or not. Incorporating the specific terms of a PAP into an interconnection agreement not only raises the possibility of varying plans, but also the need to constantly update the agreement for adjustments made to the applicable plan. Moreover, incorporating sets of metrics into multiple interconnection agreements would make it difficult and cumbersome to make needed changes to metrics or standards in order to reflect industry consensus and new developments, such as new products or services. Generic dockets or collaboratives involving all interested parties are much better suited than individual interconnection agreements for the industry participation, consensus, and development of workable metrics over time. The Commission previously has recognized that "the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time." ¶ 128 of the *Verizon PA 271 Order.*[4]

Not only do AT&T and WorldCom have no "right" to contract language addressing performance incentives, their claims that the absence of contractual provisions leaves them unprotected—and Verizon VA without appropriate incentives—is false. As noted above, Verizon already is subject to a comprehensive plan adopted in the *BA/GTE Merger Order*[5] that includes performance standards and remedies, and ultimately will be subject to the standards and remedies arising from the Virginia Commission proceedings.

As discussed, in their Petitions for Arbitration, both AT&T and WorldCom assert that the goal of a PAP is to provide Verizon VA with the incentive to provide excellent service. Accordingly, their current references to the PAP as a "compensation" scheme are misplaced. Petitioners cite no authority for the proposition that, in the context of an interconnection agreement, they are entitled to a self-executing "compensation" scheme that eliminates the need to prove either the liability of the ILEC or the amount of damages suffered by the CLECs.[6]

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[4] *In The Matter Of Application Of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., And Verizon Select Services Inc. For Authorization To Provide In-Region, InterLATA Services In Pennsylvania*, CC Docket No. 01-138, FCC No. 01-269 (Rel. Sept. 19, 2001) ("Verizon PA 271 Order").

[5] *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 F.C.C.R. 14032 (2000).

[6] Pointing to the *New York 271 Order*, AT&T asserts that self-executing compensation schemes are standard in interconnection agreements. AT&T Opposition, pp. 7-8. As demonstrated in Verizon's renewed motion, the New York combination of generic remedies and individual interconnection agreement remedies is the exception rather than the norm. *See* Verizon Virginia Inc.'s Motion To Dismiss Consideration Of Issues Related To Performance Measures And Assurance Plans, p. 2 n.1.

4. **Verizon VA Has Asked For Deference To The Virginia Commission On Performance Standards And Remedies From The Time It Filed Its Answer.**

AT&T wrongly suggests that this motion is untimely. AT&T Opposition, pp. 4-5. Verizon VA questioned the jurisdiction of this Commission with respect to performance standards and remedies in its Answer to AT&T's and WorldCom's Petitions, in its original motion to dismiss, and then again in its renewed motion to dismiss. Plainly, any delay in addressing those objections does not render Verizon VA's jurisdictional arguments untimely.

Moreover, contrary to AT&T's contention, Verizon VA's motion does not seek to have performance standards and remedies issues remanded to the Virginia Commission. AT&T Opposition, p. 10. The Virginia Commission already is considering those issues; no remand is necessary for the Virginia Commission's work to continue and Verizon VA's motion contemplated no such remand. On the contrary, because the Virginia Commission has manifestly <u>not</u> "failed to act" on these issues, this Commission lacks authority to assume the jurisdiction of the Virginia Commission to begin with.

<u>Conclusion</u>

As this Commission recently has recognized, the performance standards resulting from the Virginia collaborative proceedings are worthy of deference and eliminate any need to revisit such issues in this proceedings. The Virginia Commission continues to act on these issues. As it has with respect to performance standards, this Commission should refrain from action that would "affect, supplant, or supersede" the Virginia Commission's ongoing action. ¶ 281 of the *BA/GTE Merger Order.*

Respectfully submitted,

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Dated: November 9, 2001

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing VERIZON VIRGINIA INC.'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS CONSIDERATION OF ISSUES RELATED TO PERFORMANCE MEASURES AND ASSURANCE PLANS was served as follows this 9th day of November 2001:

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